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No. 470

In the Supreme Court of the United States

OCTOBER TERM, 1960

LAMBERT WILLETT, ET AL., PETITIONERS

v.

COMMISSIONER OF INTERNAL REVENUE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

J. LEE RANKIN,
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Petitioners were members of a family partnership engaged in wholesale buying and selling of whiskey. On about July 1, 1947, petitioner Thompson Willett discussed with a whiskey broker (Metzger) the possibility of selling the partnership's entire inventory of whiskey, which had greatly increased in value when wartime price controls were terminated. Thompson advised Metzger that petitioners would be interested in the sale only if made in a form such that the gain would be taxable as capital gain. On July 3, Thompson furnished Metzger a list of the inventory, which Metzger in turn, on July 7, forwarded to an officer of Joseph E. Seagram & Sons Co., a potential buyer (Pet. 31–32).

On July 31, the partnership transferred to a newly-formed corporation, Wildwood Corporation, substantially all of its whiskey inventory in exchange for all the stock of the corporation, which was then distributed pro rata to the partners. On August 6, Metzger informed Thompson that a client (Seagram) was interested in buying the stock, admittedly for the purpose of acquiring the inventory. Terms negotiated by representatives of the parties on August 19–21 were approved by the partners and the sale was closed on September 19, payment being made to each partner for his shares on September 29 (Pet. 33–36, 38).

The Tax Court, in deficiency proceedings, held that the several steps, viewed together, amounted to a sale by the partnership of its inventory, the gain on which was taxable as ordinary income. In the light of all the circumstances and the closeness in time of the several steps, it found petitioners' explanation of the creation of Wildwood as being unrelated to the sale to be "unconvincing and weak" as well as "self-serving" and to impose too great a "strain" on the court's "credulity" to be accepted (Pet. 50), and concluded that Wildwood served no business purpose and was created simply to serve as a conduit for the transfer of the inventory from the partnership to the purchaser (Pet. 40). The court of appeals, finding that conclusion not to be clearly erroneous, affirmed, one judge dissenting (Pet. 69–82).

Aware that the characterization of the transaction on the particular facts presents no question appropriate for review here, petitioners purport to find

a conflict among the courts of appeals on the extent to which inferences from evidentiary facts are subject to the "clearly erroneous" standard of review. That question, however, necessarily turns on the precise nature of the inference being drawn and of the facts from which it is drawn, and general statements about "evidentiary facts" and "ultimate conclusions" have little significance outside the particular context in which they are made. None of the cases cited involved facts or issues closely resembling those here and there is, accordingly, no meaningful conflict requiring resolution by this Court. The petition for certiorari should be denied.

Respectfully submitted.

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Solicitor General.

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NOVEMBER 1960.